

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 90 of the  
Commission's Rules To Provide  
for the Use of the 220-222 MHz  
Band by the Private Land Mobile  
Radio Service

PR Docket No. 89-552  
RM-8506

Implementation of Sections 3(n)  
and 332 of the Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile  
Services

Implementation of Section 309(j)  
of the Communications Act --  
Competitive Bidding, 220-222 MHz

DOCKET FILE COPY ORIGINAL  
PP Docket No. 93-253

To the Commission:

COMMENTS OF SUNCOM MOBILE & DATA, INC.

SunCom Mobile & Data, Inc. ("SunCom")<sup>1/</sup>, by its attorneys, hereby provides comments in response to the Commission's Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking ("Third Notice")<sup>2/</sup> in the referenced proceeding. By these comments, SunCom addresses the focal component of the proposal set forth in the Third Notice: the Commission's proposal

<sup>1/</sup> SunCom is a party to the subject proceeding. On February 1, 1994, SunCom filed a Request for Declaratory Ruling ("Declaratory Ruling Request") and Request for Rule Waiver of Section 90.725(f) of the Commission's Rules ("Waiver Request"), which requests were denied in the Commission's CMRS Third Report and Order, 9 FCC Rcd 7988 (1994), and which denial was affirmed in the Third Notice.

<sup>2/</sup> Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, PR Docket No. 89-552 (RM-8506), GN Docket No. 93-252, PP Docket No. 93-253, 60 Fed. Reg. 45,566 (Sept. 7, 1995).

to license non-nationwide 220-222 MHz channels on a wide-area, multi-frequency basis. As set forth below in more detail, SunCom applauds the Commission's action in recognizing the benefits of wide-area, multi-frequency licensing, which benefits SunCom long ago urged the Commission to adopt, and urges the Commission to establish true regulatory parity by extending those same rules to existing licensees.

#### **I. BACKGROUND**

In late 1993, SunCom first approached the Commission advocating relief that would permit it to construct and operate wide-area, multi-frequency 220 MHz systems. After discussing the matter informally with the staff and incorporating many staff suggestions, SunCom formally presented its Waiver Request and Declaratory Ruling Request in early 1994. In an apparent effort to assure prompt response to these requests, the Commission incorporated the requests into the instant proceeding, which proceeding had a statutorily-mandated August, 1994 deadline for resolution. When, in August 1994, the Commission adopted its initial Commercial Mobile Radio Services ("CMRS") rules, it did not address either of SunCom's requests. Subsequently, when the full text of the decision was released one and one-half months later, summary denials of what the Commission believed to be each of the SunCom requests were included in the text. SunCom timely petitioned for reconsideration of those rulings, which reconsideration requests were denied by the Commission in the Third Notice. Earlier this month, SunCom petitioned the U.S. Court of

Appeals for the D.C. Circuit to review the Commission's latest denial of relief to SunCom.

## II. THE BENEFITS OF WIDE-AREA, HIGH CAPACITY

In its requests, SunCom was the first 220 MHz emissary to explain to the Commission that its initial local 220 MHz licensing procedures restricted system capacity and coverage such that local 220 MHz systems were unlikely to be competitive with alternative services. As a result, SunCom sought authority to offer wide-area coverage, with increased frequencies and associated capacities. In order to facilitate prompt affirmative action on its requests, SunCom patterned them after requests for similar service that had been granted to multiple other carriers.<sup>3/</sup> Despite Commission pronouncements that its grants of extended construction schedules to those other carriers would "put future parties on notice" that it would continue to apply its extension policies to other Part 90 construction schedules, in order to avoid discrimination, the Commission elected not to grant this very same type of relief to SunCom.

Notwithstanding the Commission's unwillingness to grant SunCom's requests for wide-area, multi-frequency authorizations, SunCom supports the Commission's proposal to license 220 local

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<sup>3/</sup> See the Commission's rulings granting extended construction schedules for FleetCall, Inc., 6 FCC Rcd 1533, 1536 (1991); American Mobile Data Communications, Inc., 4 FCC Rcd 3802, 3805 (1989); Advanced Train Control System, 3 FCC Rcd 427, 428 (1988); IBM Research and Development, Inc., 53 Rad. Reg. 2d, 675, 677 (1983); and Power Spectrum, Inc., 8 FCC Rcd 4452, 4454 (Pri. Rad. Bur. 1993).

systems in this same fashion. As SunCom has previously advised the Commission, such action is necessary to permit 220 MHz systems to provide competitively viable service.

SunCom also urges the Commission to extend its proposal to include existing licensees, as well as newly-filed applicants, and to afford existing applicants ample opportunity to make the transition to newly-adopted rules.<sup>4/</sup> Such inclusion is necessary in order to preclude one group of 220 MHz licensees from being placed at a competitive disadvantage vis-a-vis others, simply by virtue of the timing of their filings. SunCom submits that the regulatory parity that would result from the Commission establishing this more uniform framework for 220 MHz local licenses is the very type of result Congress sought when it adopted the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

### III. CONCLUSION

SunCom applauds the Commission for finally recognizing the benefits of the wide-area, multi-frequency 220 MHz system that SunCom has long been advocating. Such systems will serve the public interest by permitting 220 MHz systems to be competitive with alternative services.

SunCom urges the Commission to extend the benefits of wide-area licensing to existing licensees, as well as to new entrants into the market. This can be achieved by granting the type of relief that SunCom has already requested and by affording existing

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<sup>4/</sup> See SunCom's letter of August 17, 1995, to the Commission, a copy of which is attached, requesting such extension of time.

licensees a reasonable opportunity to make the transition to the new rules. Grant of such relief would further the public interest by establishing the regulatory parity that Congress sought when it enacted the Budget Act.

Respectfully submitted  
SUNCOM MOBILE & DATA, INC.

By:   
Thomas Gutierrez

Its Attorney

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\* NOT ADMITTED IN D.C.

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

August 17, 1995

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FEDERAL COMMUNICATIONS COMMISSION  
SECRETARY

Re: General Docket No. 93-252

Dear Mr. Caton:

On behalf of SunCom Mobile & Data, Inc. ("SunCom,"), we write to urge an extension of construction time for existing 220 MHz non-nationwide licensees, for a minimum of 12 months after (a) the effective date of the new 220 MHz rules, or (b) the current 220 MHz construction deadline, whichever is later. In support of this request, we submit the following.

Last week, in the context of an Interactive Data and Video Service ("IVDS") ruling, the Commission recognized that system build-out requirements should be extended where parties have shown that there are not sufficient quantities of suitable, competitively priced equipment for the industry. See the Commission's NEWS release in WT Docket No. 95-131, Mimeo 55171, released August 7, 1995. A copy of the NEWS release is submitted herewith. In particular, the Commission properly determined to eliminate IVDS construction deadlines where there are existing equipment shortages and extensions of construction deadlines are necessary to provide licensees with greater flexibility in making decisions regarding financing, equipment selection, and other construction related considerations. Id.

In the 220 MHz industry, a small, new industry that is pioneering narrowband technology, virtually no mobile equipment is available at competitive prices. Uniden, which long had an interest in manufacturing 220 MHz equipment, has discontinued such operations. United Parcel Service, Inc., which played a critical

role in having the 220 MHz proceeding initiated, long ago discontinued manufacturing efforts and has focused on other sources of communications, principally cellular. EF Johnson Co. ("EF Johnson") is not able to manufacture any mobile units for loading systems until well into the upcoming year, and has very limited capability to supply systems equipment. Although Securicor has in recent months begun manufacturing equipment, it cannot supply by year's end any mobiles at commercially viable prices, except for its initial system and related-party customers. Even for a 50-plus percent premium, it may be able to supply only very limited quantities, insufficient for justifying costs of operation and marketing and meeting projected market demands.

Additionally, EF Johnson and Securicor (which cooperate in manufacturing the same "Linear Modulation" 220 MHz equipment) have informed prospective customers, including SunCom, that before producing mobiles for the market, they had to agree on the trunking protocol to use, either EF Johnson's "LTRe", or the European "MPT1327." This was not decided upon until very recently. Only then could manufacture of mobiles commence. But, as noted above, such manufacture has commenced only by Securicor, and only for existing and related-party customers.

While SEA, a small vendor, continues to supply systems and mobile unit equipment in modest quantities, its technology cannot provide the needed data efficiency and capability for 220 MHz companies looking to data as an essential or primary service necessary for the commercial success of 220 MHz -- as does SunCom, based upon its extensive market research.

The Commission, in its announcement on proposed 220 MHz rules released on July 28, 1995, recognized that various types of data transmission, including fixed data, are growing public needs that 220 MHz can well serve. See NEWS Release entitled "Commission Proposes Plan to Roll Out Wireless Services," mimeo \_\_\_\_, released July 28, 1995 (copy enclosed). Being permitted to do so is part of the announced "plan to reduce the burdens and...enhance the competitive potential for 220 MHz services." Id. However, there is currently no equipment available for this purpose from the vendors of "Linear Modification", the 220 MHz technology that is by far the most viable for data applications. Besides there being a severe shortage of basic voice dispatch mobiles, as discussed above, there are none with modems needed for mobile data (and no systems and remote-radio equipment even in the design stage for fixed data). Further, while the Commission has recognized 220 MHz as a CMRS provider, there are also no switches available for interconnection.

There are a number of other reasons why a minimum of 12 months extension of time is appropriate. Based solely upon a review of the Commission's NEWS release of July 28, 1995, which is the only

public pronouncement of the Commission's most recent proposed action, it appears as though the Commission has promulgated a substantially revised set of rules to govern 220 MHz. Under such circumstances, licensees should be afforded an opportunity to revise system design, marketing plans, and overall business plans, in order to take advantage of the new rules. The extension requested herein is wholly consistent with the construction period recently adopted for newly granted single site CMRS licenses, and SunCom submits that the challenges and opportunities associated with 220 MHz narrowband and the new rules are at least equal in magnitude to those that face new CMRS licensees generally.

The need for certainty in the industry presents yet another reason for a 12-month extension. The Commission has previously recognized that litigation presents a legitimate basis for extensions of time to construct. See, e.g., Order of the Private Radio Bureau released March 30, 1994, where the Commission granted an across-the-board extension in view of pending litigation. Due to the substantial changes in the Commission's rules governing 220 MHz licensees, it would be naive to suspect that no party in the industry would challenge the proposed rules, or that any such challenge would not cast a further considerable cloud over the industry.

The subject request for an extension of at least one year is not a replacement or substitute for SunCom's prior request for an extension of time. By its July 28 NEWS release, the Commission itself wholly undermined the only specific reason it presented in the Third Report and Order in General Docket 93-252 in denying SunCom's request for a "multi-year" construction permit, i.e., that it is "premature to assume that 5-channel stand alone 220 MHz service is not viable..." (SunCom argued that 220 MHz wide-area multi-site CMRS networks will be far more efficient, robust, and viable than stand-alone systems.) Less than one year after denying the SunCom petition, the Commission adopted SunCom's logic and conclusions, in its NEWS release on July 28, 1995, concerning the new 220 MHz rulemaking proposal -- much as it had done in General Docket No. 94-40, \_\_\_ FCC Rcd. \_\_\_ 1995, when it permitted telephone company entry into 220 MHz. Indeed, the Commission now plans to continue licensing in 220 MHz only for such wide-area multi-site CMRS networks, and for such, to grant construction over a five- to ten-year period. And in the "telco entry" rulemaking discussed above, the Commission concluded that telcos should be allowed in 220 MHz so that their resources could facilitate development of such viable networks. Thus, having adopted SunCom's logic and conclusions, the Commission cannot refuse to grant SunCom's petition on the theory that it would somehow be inconsistent with newly proposed rules. And regardless of its decision is rendered, until substantially after the decision is given, the SunCom licenses should not be subject to expiration.



SunCom is mindful of the fact that the Commission has granted multiple requests for generic extensions of time. Unfortunately, those extensions have been granted on a piecemeal basis, and virtually at the eleventh hour with respect to each construction period, thereby reducing the benefit associated with composite extensions. Accordingly, extensions granted to date simply are not sufficient to permit the 220 MHz industry to plan, obtain financing, grow, and flourish. Nowhere can this be more clearly demonstrated than by virtue of reviewing the lack of construction to date, and the dwindling interest on the part of equipment manufacturers. The twelve-month minimum extension proposed herein would facilitate greatly a badly needed revitalization of the industry.

For all the above reasons, the Bureau should (i) extend the construction period for all 220 MHz licenses to, at minimum, the latter of the effective date of the new 220 MHz rules, or the end of 1996; (ii) expedite the new 220 MHz rulemaking, and in conjunction thereto, (iii) render its decision on the SunCom Petition for Reconsideration consistent with the new rules.

Respectfully submitted,

SUNCOM MOBILE & DATA, INC.

By: 

Thomas Gutierrez  
Counsel for SunCom Mobile &  
Data, Inc.

cc (By Hand): Laurence Atlas, Esquire  
Mr. Martin Liebman

TG:cms



# NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC 515 F.2d 383 (D.C. Cir. 1974)

Report No. DC 95-106 ACTION IN DOCKET CASE

August 7, 1995

## COMMISSION PROPOSES ELIMINATION OF ONE-YEAR CONSTRUCTION REQUIREMENTS FOR IVDS LICENSEES (WT DOCKET NO. 95-131)

The FCC has proposed to amend the rules to eliminate the one-year construction "build-out" requirement for Interactive Video Data Service (IVDS) licensees.

The IVDS service rules provide that licensees must make service available to at least 10 percent of the population or area within one year, 30 percent within three years, and 50 percent within five years.

Certain IVDS auction winners have requested elimination of the one-year construction benchmark. The petitioners argued that the IVDS equipment market is in early development and has yet to provide sufficient quantities of suitable, competitively priced equipment. They argued further that technological development will be unnecessary curtailed if the industry is consigned to the limited scope and application of the current equipment options.

The Commission stated that the original construction benchmark was crafted in the context of awarding licenses by lottery and was intended to reduce speculation and spectrum warehousing. The Commission stated further that in light of its experience with auctions, it no longer believes the 10 percent requirement is necessary to achieve these objectives.

Additionally, the Commission believes that it is in the public interest to provide licensees with greater flexibility in making decisions concerning financing, equipment selection and other considerations related to construction. Because this proposal would not alter the three-and-five-year benchmarks, licensees would still be required to act responsibly in delivering service to the public in a timely fashion.

Comments are requested on the proposed rule change.

(over)



# NEWS

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See MCI v FCC, 515 F.2d 385 (D.C. Cir. 1975).

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Report No.

ACTION IN DOCKET CASE

July 28, 1995

## **COMMISSION PROPOSES PLAN TO ROLL OUT WIRELESS SERVICES**

(PR Docket No. 89-52, GN Docket No. 93-252

PR Docket No. 93-253)

As part of its ongoing effort to license expeditiously a wide range of wireless telecommunications services, the FCC today announced a plan to reduce burdens and to enhance the competitive potential for 220 MHz services. The 220 MHz service has the capability to provide a variety of communications services including two-way data transmission, paging, and traditional dispatch services.

Today's action by the FCC will speed licensing and enable 220 MHz licensees to keep up with consumer demand for these new and evolving services. The FCC's proposals are intended to promote the continued development of the 220 MHz service and to enable licensees to implement new communications services to meet the future needs of the American public.

The Commission proposed to permit 220 MHz licensees to offer not only mobile services, but fixed wireless services as well, such as data transmissions among automatic teller machines. The Commission also proposed to allow 220 MHz licensees to offer paging services.

For future licensees in the 220 MHz band, the Commission proposed to:

- Assign 60 channels in 172 "Economic Areas" as defined by the Bureau of Economic Analysis in the Department of Commerce
- Assign 65 channels in areas defined by five "220 MHz Regions"
- Allow all applicants, both private and commercial, to apply for these channels
- Assign the channels through competitive bidding
- Provide 10 year license terms and require licensees to meet five- and 10-year construction benchmarks
- Eliminate channel use restrictions, such as "data only" and "non-trunked"

- more -

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For licensing nationwide channels, the Commission sought comment on three alternative methods of disposing of 33 pending Phase I applications for nationwide, non-commercial channels:

- Return the applications without prejudice, and auction nationwide licenses under competitive bidding rules proposed in today's Notice.
- Conduct a lottery to award the four available nationwide channels.
- Grant authorizations among the 33 applicants through comparative hearings.

The Commission proposed the following framework for nationwide licensing:

- License 30 channels on a nationwide basis to all applicants -- i.e., applicants that intend to use the channels to offer commercial services as well as applicants that intend to use the channels for their private, internal use.
- Assign these 30 channels in the form of three 10-channel authorizations.
- Assign these three authorizations through competitive bidding.
- Assign nationwide licenses for a 10-year term and require nationwide licensees to meet five- and 10-year construction benchmarks.

The Commission also sought comment on the issue of whether the framework of allocation, licensing, and operational rules for nationwide licenses should apply to the 33 pending applications if those applications are awarded pursuant to lotteries or comparative hearings. For example, the Commission asked commenters to address whether licenses granted under either of these two options should continue to be governed by current rules, with the authorizations awarded for non-commercial use only, or whether licensees obtaining these authorizations should be permitted to operate under the rules proposed for nationwide licensing.

The FCC also sought comment on how to treat pending, mutually exclusive applications for non-nationwide 220 MHz licenses.

The Commission tentatively concluded that the principal use of the Phase II spectrum, with the exception of the channels reserved for the Public Safety Radio Service and Emergency Medical Radio Service, is likely to be for subscriber-based services for compensation. Therefore, mutually exclusive applications for these channels should be assigned by competitive bidding. The FCC proposed simultaneous multiple round auctions. In addition, this proposal contains special provisions for designated entities (which are defined by the statute as small businesses, women, minorities, and rural telephone companies), with small business eligibility depending on size.

Action by the Commission July 28, 1995, by (FCC --). Chairman Hundt.

-FCC-

News Media contact: Stacey Reuben Mesa at (202) 418-0654

Wireless Telecommunications Bureau contacts: Martin Liebman at (202) 418-1310 or Rhonda Lien at (202) 418-1300.

**CERTIFICATE OF SERVICE**

I, Catherine M. Seymour, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 27th day of September, 1995, have had hand delivered copies of the foregoing "COMMENTS OF SUNCOM MOBILE & DATA, INC." to the following:

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Commissioner James H. Quello  
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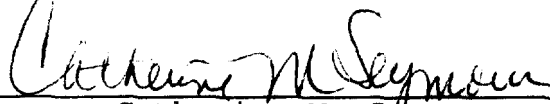
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